

REMARKS

This amendment is submitted in response to the non-final Office Action mailed April 28, 2011. Claims 1-22, 24, and 26-41 are pending in the application. Claims 14, 6, 7, 9, 12, 17-19, 22, 27, 28, 30, 32, and 34-41 have been amended.

The Office Action rejected Claims 1-22, 24, and 26-41 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kalmus et al. (US 4,674,044) in view of Anaya et al. (US 7,454,372). As with applicant's prior responses, applicant has carefully considered the Kalmus and Anaya references. Applicant respectfully submits that the amended claims are in allowable condition. Reconsideration of the application is respectfully requested.

Patentability of Claims 1-6, 17, 19, and 24

For at least the following reasons, applicant submits that Kalmus and Anaya fail to teach or suggest the elements recited in Claim 1. Claim 1 and its dependent Claims 2-6, 17, 19, and 24 are therefore patentable over Kalmus and Anaya.

Claim 1 recites, in part, "*notifying a set of first computer processes of a proposed price for buying or selling a security, wherein the set of first computer processes represents a subset of market participants that is less than all of a plurality of market participants participating in a market, and wherein a trade for the security at the proposed price is not executable at the market.*" In the Office Action, the Examiner cited Kalmus Col. 4, lines 1-67, Claim 1, and Claim 3 of Kalmus as allegedly teaching these elements of Claim 1.¹ In Col. 4, Kalmus describes computing apparatus connected via a network for securities trading. Beginning at Col. 4, line 51, Kalmus describes, for example, a system for effecting securities trading. Kalmus explains:

To characterize the FIG. 1 arrangement in overview, the operative (best bid, best asked inside market) prices for each stock in which the system proprietor makes a market are communicated over link 22 from

¹ The Office Action referred to "claim 3 lines 5-40." However, Claim 3 spans lines 8-19 of Col. 11 of Kalmus. Applicant has interpreted this citation to refer to Col. 11, lines 8-19.

NASDAQ and repose in memory at processor 10. The market maker has a position in each security in which he makes a market and the particulars of that position also repose in memory within the composite processor 10. Orders for trades in the relevant securities are funneled to the processor 10 in real time as they occur. Orders can be received in several ways. For example and most typically, orders may be generated by the brokerage firm's account executives at the branches 27 and communicated to the CPU 10 via the communication path 25. Orders are also supplied to the processor 10 from third party financial sources 29 (e.g., other brokerage firms, directly from computer equipped customers, banks or the like) over communication network 26. Each of the orders includes appropriate data fields outlined above and more fully discussed below, such as an identification of the office and customer or other originator of order, stock identification, price particulars and so forth.

While Kalmus states that orders are received with information "such as an identification of the office and customer or other originator of order, stock identification, price particulars and so forth" (Col. 5, lines 2-5), nothing in Kalmus suggests "notifying a set of first computer processes of a proposed price for buying or selling a security, wherein the set of first computer processes represents a subset of market participants that is less than all of a plurality of market participants participating in a market, and wherein a trade for the security at the proposed price is not executable at the market." According to Kalmus, orders are sent for execution at the market. (Col. 5, lines 22-23.) Sending of such orders to a market does not constitute "notifying a set of first computer processes of a proposed price for buying or selling a security, wherein the set of first computer processes represents a subset of market participants that is less than all of a plurality of market participants participating in a market, and wherein a trade for the security at the proposed price is not executable at the market."

To the extent that orders received at the market taught by Kalmus are published, it should be noted that the prices are published to all of the participants at the market, not just a subset that is less than all of the plurality of market participants participating in the market. (See, e.g., Col. 5, lines 23-30.) Additionally, such publication of the price by Kalmus does not constitute "notifying a set of first computer processes of a *proposed price* for buying or selling a security . . . [that] is not executable at the market."

As applicant has previously pointed out and the Examiner has not disputed, Claim 1 uses different terms to refer to a "published price" and a "proposed price." It is evident from a review of the claim language that a "*published price*" is not the same as a "*proposed price*." Claim 1 explicitly recites "wherein the plurality of market participants can execute a trade for the security at the published price" while "a trade for the security at the proposed price is not executable at the market." (Emphasis added.)

The Examiner cited the disclosure of Claims 1 and 3 of Kalmus, but Claims 1 and 3 of Kalmus merely set forth a system that receives trade orders, qualifies trade orders for execution, and executes trade orders that are qualified. The disclosure in Claims 1 and 3 of Kalmus is not pertinent to the patentability of Claim 1.

Amended Claim 1 further recites, in part, "*receiving an improved price for the security from at least one of the first computer processes, wherein the improved price is received in response to the notifying the set of first computer processes of the proposed price, wherein the improved price is higher than the proposed price for buying the security or lower than the proposed price for selling the security,*" and "*in response to receiving the improved price from the at least one of the first computer processes, providing the improved price as a published price.*" In this regard, the Examiner referred to the same portions of Kalmus (Col. 4, lines 1-67, and Claims 1 and 3) as discussed above, and further cited Col. 5, lines 1-67 and Col. 6, lines 1-47. Column 5 of Kalmus describes the "qualification" of orders and execution of "qualified" orders, and also discusses the processing of price changes.

While Kalmus purports to teach various processes in which a user can execute a trade based on a published buy or sell price (see, e.g., Col. 1, line 57, to Col. 2, line 8), Kalmus does not teach or suggest "receiving an improved price for the security from at least one of the first computer processes, wherein the improved price is received in response to the notifying the set of first computer processes of the proposed price, wherein the improved price is higher than the proposed price for buying the security or lower than the proposed price for selling the security,"

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{LLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

nor does Kalmus teach or suggest "in response to receiving the improved price from the at least one of the first computer processes, providing the improved price as a published price."

Notably, the Examiner did not indicate which aspect or element of Kalmus constitutes a "proposed price" (that is notified to "a subset of market participants that is less than all of a plurality of market participants" and which "is not executable at the market"), nor did the Examiner identify any aspect or element in Kalmus that constitutes receiving an "improved price" (that is "received in response to the notifying the set of first computer processes of the proposed price" and is "higher than the proposed price for buying the security or lower than the proposed price for selling the security").

Anaya was cited for allegedly disclosing that market participants can execute a trade for a security at a published price. Anaya, however, does not rectify or overcome the deficiencies of Kalmus, discussed above. Neither Kalmus nor Anaya, alone or combined, teaches or suggests all of the elements of Claim 1. Therefore, applicant maintains that a *prima facie* basis for rejecting Claim 1 has not been established. The rejection of Claim 1 should be withdrawn and the claim allowed.

Claims 2-6, 17, 19, and 24 depend either directly or indirectly from Claim 1 and therefore are patentable for at least the same reasons presented above with respect to Claim 1. Claims 2-6, 17, 19, and 24 are also patentable for the additional subject matter they recite which is not taught or suggested by the cited art.

Furthermore, as in applicant's prior response, applicant notes that *all of the dependent claims* in the present application were rejected based on the same cited portions of Kalmus, namely, Col. 4, lines 1-67; Claim 1; Claim 3; Col. 5, lines 1-67; and Col. 6, lines 1-47, regardless of the subject matter recited in the claims.²

² Notably, the Office Action rejected the dependent claims based on claim language that is not present in the claims. Furthermore, at pages 3-13, the Office Action referred to "claim 3 lines 5-40." However, as noted above, Claim 3 of Kalmus spans lines 8-19 of Col. 11. These citations have been interpreted to refer to Col. 11, lines 8-19.

In *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 U.S.P.Q.2d 1385, 1395-97 (2007), the Supreme Court indicated that the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention would have been obvious. See also M.P.E.P. § 2143. Applicant again respectfully submits it is improper for the Examiner to rely on a blanket citation of the foregoing portions of Kalmus to reject all of the dependent claims, without providing a clear articulation of the reasons why the invention as claimed in each of the dependent claims would have been obvious.

For at least the foregoing reasons, applicant submits that the rejection of dependent Claims 2-6, 17, 19, and 24 is improper and should be withdrawn.

Patentability of Claims 7-11 and 26

For reasons similar to those discussed above with regard to Claim 1, Kalmus and Anaya fail to teach or suggest all of the elements recited in Claim 7.

For example, Kalmus fails to teach or suggest a method that includes "receiving a proposed price for buying or selling a security from a second computer process, wherein the second computer process is providing a market, and wherein a trade for the security at the proposed price is not executable at the market." As discussed above, a "proposed price" is not the same as a "published price."

Kalmus also fails to teach or suggest the elements of "in response to receiving the proposed price, determining whether to improve upon the proposed price for the security by offering an improved price that is higher than the proposed price for buying the security or lower than the proposed price for selling the security, and in response to an affirmative determination, offering the improved price to the second computer process to be provided by the second computer process as a published price to a plurality of market participants at the market, wherein a trade at the published price is executable by the market participants at the market."

Anaya, for its part, fails to supply the teachings that are missing in Kalmus. As with Claim 1, the Office Action cited Col. 21, lines 52-61, and Col. 23, lines 24-13, of Anaya, but

these passages merely refer to trading securities based on published buy and sell prices. Such trading does not constitute "determining whether to improve upon the proposed price for the security by offering an improved price that is higher than the proposed price for buying the security or lower than the proposed price for selling the security," as recited in Claim 7, particularly where such determining is performed "in response to receiving the proposed price."

For at least the foregoing reasons, applicant submits that Claim 7 is patentable over Kalmus and Anaya. Since the cited references fail to establish a *prima facie* basis for rejection, the rejection of Claim 7 should be withdrawn and the claim allowed.

Claims 8-11 and 26 dependent from Claim 7 and are patentable for at least the same reasons presented above. Applicant further submits that Claims 8-11 and 26 are allowable for the additional subject matter they recite, which is not taught or suggested by Kalmus and Anaya.

Patentability of Claims 12-16, 18, and 20-22

The Examiner has not set forth a proper factual basis that supports an obviousness rejection of Claim 12. Therefore, the rejection of Claim 12 should be withdrawn.

Kalmus does not teach or suggest a method of setting a price for a security that includes "engaging in a price discovery procedure with a set of first computer processes before responding to a request for a current buy or sell price of the security, wherein the price discovery procedure produces a discovered price for the security" and "providing the discovered price as the current buy or sell price of the security in response to the request, wherein the discovered price is a price that is not included in the order book and is higher than the book buy price or lower than the book sell price," as claimed in Claim 12.

Conceding deficiencies in Kalmus, the Examiner relied on the disclosure of Anaya, but Anaya is also deficient with respect to the elements of Claim 12. The disclosure of Anaya at Col. 21, lines 52-61, and at Col. 23, lines 24-31 does not teach or suggest the subject matter that is claimed in Claim 12. Thus, even if Kalmus and Anaya were combined, the combination does

not disclose or suggest all of the elements of Claim 12. Consequently, Claim 12 is not obvious and should be allowed.

Claims 13-16, 18, and 20-22 depend from Claim 12 and thus are patentable for at least the same reasons presented above with respect to Claim 12. Applicant further submits that Claims 13-16, 18, and 20-22 are patentable for the additional subject matter they recite, which is not taught or suggested by the cited art. Accordingly, Claims 13-16, 18, and 20-22 should be allowed.

Patentability of Claims 27-33

Claim 27 is directed to a computing system. The computing system includes "a notification component executing on at least one computer processor, wherein the notification component is configured to notify a set of market participants of a proposed price for buying or selling a security, wherein the set of market participants is a subset of a plurality of market participants participating in a market that is less than all of the plurality of market participants participating in the market, and wherein a trade for the security at the proposed price is not executable at the market."

Furthermore, as claimed, the computing system includes "a pricing component" that is configured "to receive an improved price for the security from at least one of the market participants in the set of market participants, wherein the improved price is received in response to notifying the set of market participants of the proposed price, [and] wherein the improved price is higher than the proposed price for buying the security or lower than the proposed price for selling the security." Also, "in response to receiving the improved price from the at least one of the market participants in the set of market participants," the pricing component is configured to "provide the improved price as a published price, . . . wherein the plurality of market participants can execute a trade for the security at the published price." The notification component is configured "to notify the set of market participants of the proposed price prior to the pricing component providing the published price."

For at least reasons similar to those discussed above, Kalmus and Anaya do not disclose the computing system claimed in Claim 27. In particular, neither Kalmus nor Anaya teaches "a notification component . . . configured to notify a set of market participants of a proposed price for buying or selling a security . . . that is less than all of the plurality of market participants participating in the market," and "a pricing component . . . configured to receive an improved price for the security from at least one of the market participants in the set of market participants, wherein the improved price is received in response to notifying the set of market participants of the proposed price, wherein the improved price is higher than the proposed price for buying the security or lower than the proposed price for selling the security, and in response to receiving the improved price from the at least one of the market participants in the set of market participants, provide the improved price as a published price." Claim 27 should thus be allowed.

Applicant also submits that Kalmus and Anaya fail to teach or suggest the elements disclosed in dependent Claims 28-33, which should be allowed for at least reasons similar to those discussed above.

Patentability of Claims 34-37

Claim 34 is directed to a computer-accessible medium containing computer program instructions. In response to execution by a computer, the instructions cause the computer to perform operations comprising "receiving a proposed price for buying or selling a security from a computer process, wherein the computer process is providing a market at which trades are made with respect to the security, and wherein a trade for the security at the proposed price is not executable at the market" and by "in response to receiving the proposed price, determining whether to improve upon the proposed price for the security by offering an improved price that is higher than the proposed price for buying the security or lower than the proposed price for selling the security, and in response to an affirmative determination, offering the improved price to the computer process to be provided by the computer process as a published price to a

plurality of market participants at the market, wherein a trade at the published price is executable by the plurality of market participants at the market."

For at least reasons similar to those discussed above with respect to Claim 7, applicant submits that the disclosures in Kalmus and Anaya do not teach or suggest elements of the computer-accessible medium claimed in Claim 34. Claim 34 should thus be allowed.

Additionally, Kalmus and Anaya fail to teach the elements disclosed in dependent Claims 35-37, and thus, Claims 35-37 should be allowed.

Patentability of Claims 38 and 39

Claims 38 and 39 are system claims written in means plus function format, and thus encompass the computer structures and equivalents thereof described in the specification that perform the recited functions. Applicant submits that Claims 38 and 39 are in allowable condition for at least the same reasons that Claims 1 and 12 are patentable over the cited art. The corresponding computer structures and algorithms disclosed in the specification for accomplishing the recited functions are not found in the cited art.

Patentability of Claims 40 and 41

Claim 40 is directed to a non-transitory computer-accessible storage medium containing computer program instructions for providing a published price for a security. In response to execution, the instructions cause a computer to "notify a set of first computer processes of a proposed price for buying or selling a security, wherein the set of first computer processes represents a subset of market participants that is less than all of a plurality of market participants participating in a market, and wherein a trade for the security at the proposed price is not executable at the market," "receive an improved price for the security from at least one of the first computer processes, wherein the improved price is received in response to notifying the set of first computer processes of the proposed price, and wherein the improved price is higher than the proposed price for buying or lower than the proposed price for selling," and "in response to

receiving the improved price from the at least one of the first computer processes, provide the improved price as a published price."

Claim 41 depends from Claim 40 and recites "instructions [that] further cause the computer to compare a current book price to a most recent trade price and notify the first computer processes of the proposed price in response to determining that the current book price is different than the most recent trade price."

For at least reasons similar to those discussed above with respect to Claims 1 and 6, applicant submits Claims 40 and 41 are patentable over Kalmus and Anaya. Withdrawal of the rejections of Claims 40 and 41 is respectfully requested.

Information Disclosure Statements

As a final matter, applicant respectfully requests consideration of the Information Disclosure Statements (IDSs) that were submitted on September 9, 2008; August 27, 2009; May 24, 2010; August 5, 2010; and February 18, 2011. Initialed copies of these IDSs are respectfully requested.

CONCLUSION

For at least the reasons discussed above, a *prima facie* basis for rejecting Claims 1-22, 24, and 26-41 under Section 103 has not been established. Accordingly, withdrawal of the claim rejections and allowance of the application is proper. Applicant respectfully requests action to that end at an early date.

Respectfully submitted,
CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

/Kevan L. Morgan/

Kevan L. Morgan
Registration No. 42,015
Direct Dial No. 206.695.1712

KLM:jmb

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100